



AMWU

Australian Manufacturing Workers' Union

457

the

visa handbook



Your rights
as a temporary
migrant worker
in Australia



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Introduction

OVER RECENT YEARS THE AMWU HAS BEEN WORKING HARD to defend the rights of temporary migrant workers and to end the exploitative practices that have plagued the 457 visa systems. Our

efforts have been successful in limiting the ability of employers to use temporary migrant workers to undercut the pay and conditions for all workers.

We can now count many hundreds of workers on temporary visas who have made the AMWU their union.

Under the Howard Government, Australia's intake of temporary migrant workers grew to be larger than the number of permanent migrants. The AMWU remains a strong supporter of permanent migration programs and a culturally diverse Australia. However, the union believes that migrant workers must have all the rights and protections of other Australian workers. This is why we continue to call on the government to shift the emphasis back to permanent rather than temporary migration.

The AMWU has brought many cases of 457 visa workers being exploited into the spotlight. These cases demonstrated that the system has allowed employers to exploit workers from overseas, while undermining conditions and cutting investment in training and apprenticeships.

The newly elected Rudd Government pledged to reform the 457 visa system. The AMWU has been actively involved in helping to ensure that this promise was kept and real change implemented.

The union made a major submission to

the government review process headed by industrial relations commissioner, Barbara Deegon. National President, Julius Roe is also a member of the Skilled Migration Consultative Panel, set up by the Minister for Immigration and Citizenship, Chris Evans, to oversee the reforms and review their effectiveness.

457 visa reforms During 2009 the government announced a number of significant reforms to the Subclass 457 visa. The AMWU is pleased that many of the recommendations made by unions have been listened to, and have been acted upon by the government.

The ability of immigration officers to investigate breaches and to fine employers up to \$33,000 will go a long way to stopping the worst cases of exploitation. Under the previous system employers were not able to be fined for blatant migration legislation breaches.

Employers are now required to pay 457 visa workers the same rates and conditions as other workers doing the same job in the workplace. In addition new visas will not be approved below a minimum floor salary of \$45,220 per annum. A higher English language requirement, offshore qualification assessments and more restricted access to regional exemptions and labour agreements, will all aid the development of integrity in the program. We believe that together these changes will have an important effect in reducing the problems of underpaying workers that have been associated with the program.

We remain vigilant however about some outstanding issues. At the ALP National Conference, the AMWU succeeded in

getting amendments to the ALP Platform to favour permanent, rather than temporary migration. The platform also committed to trade agreements not being used to prevent effective control of migration policy and to restrict the use of 457 visas to cases where there is a genuine shortage. Employers must not undercut local wages and conditions; have good record of employment of Australian workers and strong investment in training. Our efforts will continue, to ensure that this policy is implemented in full.

This pamphlet is intended as a guide for temporary migrant workers and all union members. We hope the information included helps workers to understand their rights and to stand up to bosses that do the wrong thing. We also believe it is the responsibility of all union members to look out for their fellow workers whether they come from the next suburb or from another country. By doing this, we ensure that all working people are better off. With this in mind please make use of this information to help improve conditions for temporary migrant workers and all working people.

In Unity

Dave Oliver,
National Secretary



457 visa reform

Unfinished business

The AMWU believes there are further reforms necessary to help ensure that 457 visa workers are not exploited, and employers do not access the visa to undermine local wages and conditions. These include:

Ensuring that the proposed new Regional Employment Bodies include union representation and can provide advice in respect of trades occupations and proposed labour agreements as to whether there is a genuine skills shortage and as to whether the visa

application is designed to undermine Australian wages and conditions.

Placing the responsibility for health insurance costs on employers as recommended by the Deegan Review. This should be done via a compulsory employer insurance levy to allow direct worker access to the public health system.

Ensuring that employers that make workers redundant are not able to access further 457 visas.

Ensuring a strong definition of the requirement for employers to demonstrate a non-discriminatory employment record and a commitment employing permanent residents.

Ensuring a stronger requirement for employers to demonstrate investment in training.

Establishing a method for 457 workers to apply for permanent residency independently of their employer.



457 visa reforms

Major reforms to the 457 visa programme have been made throughout 2009.

Changes to minimum rates of pay (from September 14th 2009).

Employers are required to provide workers on 457 visas, with pay and conditions no less favourable than those of permanent residents doing the same work at the same workplace. This rate is referred to as the "market rate". (see page 8 for details)

New employer obligations

New sponsorship obligations have been introduced including to:

- keep records
- cooperate with Immigration inspectors
- not recover costs from visa holders including recruitment or migration agent fees
- pay reasonable costs of economy class air travel from the visa holder's place of residence in Australia to the visa holder's home country

Penalties for employer breaches

Failure to meet these obligations may result

in a sponsor being barred from bringing new overseas workers to Australia. DIAC can also impose fines of up to \$6600, or apply to a Court for civil penalties of up to \$33 000.

New immigration inspector powers

Immigration inspectors have new powers. These include the power to enter a workplace without notice, inspect documents and impose fines on sponsors who breach their obligations.

Changing employer

Workers on 457 visas are now able to change employer without needing to apply for a new visa. The new employer must be an approved sponsor and must nominate the visa holder to perform a specific job. After the nomination is approved, the visa holder may start working for the new employer.

Introduction of skills assessments

Formal trade assessments are now required for tradespersons and chefs from countries not considered low-risk. This will help prevent unscrupulous employers resorting to

system, to exploit low paid unskilled workers. It will also assist workers to transition to permanent residency via the skilled migration program.

There are transitional arrangements for existing visa holders.

Health insurance

Previously, employers were responsible for medical costs incurred in public hospitals by workers on 457 visas. From 14 September 2009, new visa holders are required to maintain health insurance as a condition of their visa. There are transitional provisions for existing visa holders. For more information see page 10.

Increased English language requirements

The level of English language skills required for new applicants for 457 visas wanting to work in trade occupations and as chefs has increased. This will assist in making workers less vulnerable to exploitation related to language barriers.





Non-discriminatory employment practices

There is a new requirement that employers attest to a strong record of employing local labour and non-discriminatory employment practices.

Sharing information with the Australian Taxation Office

The Commissioner of Taxation is now able to share tax information with DIAC to ensure correct salary levels are being paid to visa holders. DIAC can cancel an employer's sponsorship or bar them from bringing new overseas workers if they breach their obligations.

Labour Agreements

A requirement for all lower skilled (ASCO 5-7) occupations to access sponsorship via labour agreements has been introduced. Labour agreements are deeds of agreement negotiated between the employer and Commonwealth setting out the terms for recruitment and engagement of a group of 457 workers. These agreements also set training obligations.

Disclaimer: This information has been prepared by the AMWU for general information purposes only. It summarises complex legislation. Detailed information on immigration requirements can be found at the Department of Immigration website: www.immi.gov.au.



457 visa workers get organised



Many hundreds of temporary migrant workers are proud members of the AMWU. Since 2001 there has been a big increase in the number of workers coming to Australia on temporary work visas.

As a union, it's our responsibility to help these workers through their membership and activism in the organisation.

Across the country the union has been involved in exposing cases of exploitation and assisting temporary migrant workers. In South Australia we have organised seminars and meetings to provide information to workers on their rights. In Sydney in 2006, we discovered gross underpayment of 457 visa workers employed by Hunan Industrial Services to work on the construction of a tissue-paper mill. The labor hire firm was subsequently forced to pay \$650,000 in wages that were owed to workers.

In Victoria the AMWU exposed a case where two 457 visa workers were forced to work with broken hands. The union assisted the workers and the company, Lakeside Printing, was subsequently prosecuted and fined \$100,000 for this appalling abuse.

Queensland branch organiser, Danny Dougherty has been very committed to working with 457 visa workers.

"The union was coming to a realisation that there were literally thousands of workers from overseas coming into Australia. They were coming into this country without any sort of industrial protection. The only real contact they had in Australia was with their employer and we were seeing case upon case of workers being exploited," he said.

"Our union came to a conclusion that we could either organise these workers, treat them as fellow workers with respect and dignity or we could ignore them and leave them to be exploited. We choose to organise these workers, industrially protect them and recruit them into the union."

With many employers attempting to intimidate migrants from joining a union, the union was forced to develop alternative methods of organising.

"We could not organise these workers at their own workplace. We had to organise after hours and on weekends. We developed a strategy of holding social functions like BBQs where we would invite 457 workers to an information session about the union" said Dougherty

"We had workers who had suffered workplace injuries being told by the boss they needed to leave Australia the next day; that they could not lodge a WorkCover claim. We were able to explain to these workers their legal rights and help them get justice," said Dougherty.

Many of the workers knew about unions and were keen to join and become active.

"More than fifty workers turned up to our first meeting," said Mr Dougherty. "They were interested in the AMWU because we have a strong reputation for protecting workers."

One of the big challenges the union faces when organising temporary migrant workers, is countering the message that the boss has control over all aspects of their life.

"We explained to workers that in Australia they have a democratic right to speak out about being exploited and a right to join a union. In the first stages we worked hard to gain the trust of the community and get real improvements for workers," said Dougherty.

In Queensland a committee of 457 visa workers has been set up within the union. This committee acts to organise and assist other temporary migrant workers. It has been essential in organising the union to go into the community and spreading the message about the work done by the AMWU to protect migrant workers.

In Western Australia where thousands of migrant workers have been employed during the resources boom, the union has developed extensive networks among temporary migrant worker communities. A community liaison officer, with the specific job of assisting to organise 457 visa workers, has been employed.

"Working with 457 visa workers pays dividends for all of us," says Dougherty. "We have not only been able to help hundreds of

Temporary migrant union members meeting at the unions Queensland office.



workers and prevent exploitation but we stopped employers from undercutting the pay and conditions of other Australian

workers. If we didn't do this, all workers in Australia would be worse off" said Dougherty.

Workers rights in Australia

All people working in Australia are legally entitled to some basic rights and conditions at work. These rights apply to ALL workers including those working in Australia on temporary work visas. These rights are part of a basic safety net designed to protect workers. Employers are not allowed by law to breach these laws and conditions.

Joining a union

All workers have the legal right to join a union. It is illegal for employers to discriminate against or treat unfairly any worker who joins a union.

Right to a safe workplace

All workers have a right to work in a safe place of work. Under the law, employers must provide a safe workplace and can be prosecuted if they don't. You have the right to refuse to perform work that endangers

your safety or that of others. You also have the right to contact your union to report a safety issue.

Hours of work

Generally workers are required to work 38 hours per week. Workers may be required to work some overtime but this amount must be reasonable and paid at overtime rates that apply in the workplace. If agreed in writing, you can work an average of 38 hours per week across a 12-month period plus reasonable additional hours.

Annual leave

All 457 visa workers are entitled to 4 weeks annual leave per year.

This is in line with the law that gives all employees (other than casual employees) 4 weeks paid annual leave per year. Some

continuous shift employees get 5 weeks paid annual leave. Annual leave is cumulative and accrues from year to year.

Personal leave

Full-time and part-time employees are entitled to:

- up to 10 days paid personal / carer's leave per year (ie. sick leave or carer's leave) This accrues on pro-rata basis (ie. it's in proportion to the hours worked)
- 2 days paid compassionate leave (if someone close to you dies) for each occasion they need it
- 2 days unpaid carer's leave for each occasion they need it (when their paid personal leave has been used up).

Personal leave is cumulative and accrues from year to year.

Your rights as a 457 visa worker in Australia

Part of this information is based on information published by the Department of Immigration and Citizenship (DIAC). It has been prepared by the AMWU and is intended to be a guide to assist workers employed on 457 visas to understand their rights in Australia. If you have any questions about the information please contact the AMWU (Ph 1300 732 698) or you may also wish to contact the relevant government agency listed at the end of this publication.

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AT WORK

How much should I be paid?

On 14 September 2009, important changes to salary requirements for workers on 457 visas were introduced. These changes require the 457 visa workers to receive the same wages and conditions of employment as Australian workers doing the same job at the same workplace - this is referred to as the "market rate".

How do I know what the market salary rate is?

The market salary rate is the wages and conditions (including hours of work) that the employer currently provides to Australian workers doing the same work in that workplace. These wages and conditions of employment may be set by an award, collective agreement or common law contract.

What if there are no Australian employees doing the same job?

If there are no Australian employees doing the same work at the workplace, the

employer must identify the market rate. They may refer to an applicable award or agreement, or if necessary, to remuneration surveys or earnings data. The Department of Immigration and Citizenship must be satisfied that the rate nominated by the employer is fairly set.

Does this mean some workers already on 457 visas could have their salaries reduced?

If the market salary rate is below the current applicable Minimum Salary Level (MSL), then employers must continue to pay existing workers on 457 visas the MSL for the duration of their visa. A Temporary Skilled Migration Income Threshold (TSMIT) of \$45 220 has been introduced, which will be indexed. New visas will not be granted where the market rate is below the TSMIT.

What money can be taken out of my salary?

Employers must not seek to recover any recruitment costs, visa fees or migration agent fees. Employers who try to recover these costs are in breach of their sponsorship obligations and DIAC can impose sanctions on them. Employers also have an obligation to pay for the cost of return travel to the visa holder's country.



Any other deductions, including for accommodation, can only be made with the understanding and written agreement of the 457 visa holder. These deductions must be reasonable and provide a benefit to you.

How often should I be paid?

Your sponsoring employer must pay you on a weekly, fortnightly or monthly basis, depending on the standard practice in the workplace.

I signed an employment contract when I was overseas. Is it valid in Australia?

Any contract you signed with your sponsor or employment agency when you were overseas is only enforceable in Australia as long as it complies with Australian laws. When working in Australia on a Subclass 457 visa, you are entitled to the same working conditions as Australian permanent residents and citizens.

Can I join a union?

Yes. Under Australia's laws, everyone has the right to join a union. If you join a union you

In 2007, Victor Castor was working for Phillips Engineering in Henderson WA on a 457 visa. Victor had complained to management about receiving only a portion of the pay rise he was promised and decided to seek alternative employment.

A firm that Victor approached was a client of his employer. When his sponsoring employer found out, they decided to sack Victor and booked him a flight home to the Philippines. Victor was then called into the office for 2 hours interrogation before they handed him the plane ticket for 1pm that afternoon.

Victor called the union from the airport and an organiser was able to get there just in time and stop them from deporting him. The AMWU was able to assist Victor and another employee to recover \$9000 in underpayment.

National President, Julius Roe (centre) with AMWU member Rico Mavotas (foreground) in Canberra as part of a union delegation to lobby members of parliament for improved protections.

are not under any obligation to inform your employer that you have joined. If you have any concerns about what your employer may do if you join a union contact the AMWU.

My workplace is unsafe. What should I do?

If you feel that your workplace is unsafe, or you have received no training on workplace safety issues, you should contact the AMWU immediately. We have specialist Health and Safety representatives who can help.

Can I bring my family dependants to Australia with me? Are they allowed to work?

You can bring members of your family to Australia providing they satisfy the requirements for the visa, including the agreement of your employer to sponsor them. Your dependants are eligible to work and study in Australia without restrictions. If your dependants choose to study, they may be required to pay international student fees.

Can my employer sack me?

Employers can only sack or lay off 457 workers in the ways allowed by Australian laws or the relevant award or collective agreement. You are protected from unfair or illegal dismissal to the same extent that Australian workers are protected.

Can my employers cancel my visas, or have me deported?

No. Employers can't cancel visas or have people deported. However, an employer who has sponsored a 457 visa holder must notify the Department of

An AMWU investigation at a Melbourne print shop, Aprint, hit the front pages of the Age and the Sydney Morning Herald after it was revealed the company took \$10,000 out of the pocket of a Chinese tradesman then tried to have him deported.

Jack Zhang had been brought to Australia on a 457 visa, had worked up to 60 hours a week and had \$200 taken out of his pay each week for 50 weeks. As soon as the \$10,000 was paid, Mr Zhang was sacked and the company applied to bring another worker from China. He did not know who to turn to for help.

Someone told him to ring the AMWU HelpDesk number. The AMWU met with Mr Zhang at his workplace and attempted to meet with his employer. Mr Zhang said he had paid an immigration agent in China \$10,000 to obtain a visa but when he arrived in Melbourne his employer told him he owed the company another \$10,000. He was required to work 60 hours a week in a print shop and received \$752 a week, before tax. The employer deducted \$200 a week and another \$120 a week for rent. After tax he was left with less than \$300 a week. Over a year period, he had paid out \$26,000 and received less than \$15,000 for working 60 hours a week. His salary was also at least \$388 a week less than the award.

The AMWU was able to claim lost wages for Mr Zhang and assist him to find another job.

Immigration and Citizenship (DIAC) if the visa holder stops working for them.

DIAC will give you 28 days to find a new sponsor or apply for another kind of visa. If the 457 visa holder does not find a new sponsor or apply for a new visa, their visa may be cancelled by DIAC and they will have to leave Australia.

Do I have right to change jobs?

Yes. A new employer must have a nomination for the 457 holder approved, and then you can start work with the new sponsor.

Can I apply for permanent residence?

Yes. If your sponsoring employer agrees they can sponsor you for permanent residence. In some cases, you may be able to meet the criteria for a permanent visa in your own right, without needing a sponsor. Call the Department of Immigration and Citizenship on 131 881 to discuss your options.

What do I need to know about superannuation?

In most cases, your sponsor must pay superannuation (pension) contributions for you. These amounts must not be deducted from your salary and must be paid directly by your sponsor to your superannuation fund. To find out more about superannuation, phone the ATO on 131 020 or visit their website at www.ato.gov.au/super.

If you entered Australia on a Subclass 457 visa, which has since expired or been cancelled, and you left Australia after 1 July 2002, you may claim a refund of any superannuation you have accumulated during your stay in Australia. For more information, visit the DIAC website at www.immi.gov.au/allforms/superannuation





Your rights as a 457 visa worker in Australia

HEALTH SERVICES

Do I need private health insurance?

If you were granted a visa on or after 14 September 2009 you must maintain private health insurance as a condition of your visa. The requirement to have private health insurance also applies to family members. It is also acceptable for an employer to agree, to pay health insurance as a part of the employment contract.

Information about private health insurers in Australia can be found on the Australian Government website: www.privatehealth.gov.au

What if my visa was granted before September 14th 2009?

Employers of workers holding 457 visas, which were granted prior to 14 September 2009, will continue to be responsible for medical expenses incurred public hospitals. However, existing 457 visa holders should consider taking out private health insurance, as it may cover costs for which the employer is not responsible. This includes health costs not incurred in a public hospital.

What about Medicare?

Most people on 457 visas are not eligible for Medicare coverage. Workers on 457 visas and their families who are not eligible for Medicare coverage can seek an exemption from the requirement to pay the Medicare

levy. They need to obtain a Medicare Levy Exemption Certificate and supply this with their tax return. For information on how to obtain this Certificate, call Medicare on 1300 300 271 or visit their website www.medicareaustralia.gov.au

IF YOU LOSE YOUR JOB

I've lost my job. What happens now? What are my options?

If you have lost your job, there are 4 options available to you:

- Find another employer who is willing to sponsor you and apply for another Subclass 457 visa to work for that new employer,
- Apply for permanent residency via the Employer Nomination Scheme (ENS) or the Regional Sponsored Migration Scheme. This allows Australian employers to sponsor employees who are foreign nationals for a permanent visa to work in Australia.
- Apply for another type of visa that you may be eligible for. For example, if you want to study, a student visa, or if you want to have a holiday before returning home, a visitor visa.
- Return to your home country

What is the Employer Nomination Scheme?

The Employer Nomination Scheme (ENS) allows Australian employers to sponsor employees who are foreign nationals for a permanent visa to work in Australia.

An eligible position must be full-time, ongoing and available for at least 3 years. It must also be on the Employer Nomination Scheme Occupation List (ENSOL)

What is the Regional Sponsored Migration Scheme?

The Regional Sponsored Migration Scheme (RSMS) allows employers in regional or low population growth areas of Australia, to sponsor employees who are foreign nationals for a permanent visa to work in Australia.

Employers must be lawfully operating in Australia, and the position must provide full time employment in Australia for two years. Conditions of employment and wages must comply with Australian legislation and awards.

Is there any chance of extending my stay beyond 28 days after ceasing employment? For example what if my children are in school, have exams in April, and I lost my job in February.

You are required, within 28 days of your employer terminating your employment, to find another employer who is willing to



sponsor you and apply for another subclass 457 visa, apply for another type of substantive visa or leave Australia. However if your circumstances prevent you from taking one of these options within 28 days, you should contact the department as soon as possible to discuss your situation with a department officer.

I heard my employer has to pay for my ticket back to my country. Is that true?

Your employer must pay reasonable costs of economy class air travel from your place of residence in Australia to your home country.

I have to leave Australia. How do I get my superannuation payments paid to me?

Information on your eligibility and procedures for lodging a claim for superannuation benefits is available from the department and Australian Taxation Office (ATO).

You can contact the ATO by phone on **13 28 61** or refer to the ATO website at: www.ato.gov.au/super/

How do I lodge a tax return?

For information on lodging an Australian tax return, you should contact the Australian Taxation Office (ATO) by telephone on **13 28 61** or refer to the ATO website.

See: www.ato.gov.au/individual

If I don't find another job can I stay here under a different visa, such as a working holiday visa or a tourist visa?

This will depend on the type of visa you apply for, and whether you are able to make a valid application for that visa. You may need to be outside Australia to make a valid application for certain types of visas. You will also need to meet all of the criteria for the grant of the visa.

Using a Migration Agent

You can find a registered migration agent on the Migration Institute of Australia (MIA) website at www.mia.org.au which lists migration agents who are members of the MIA by state and territory.

I am concerned about the way my migration agent has treated my case.

The Office of the Migration Agents Registration Authority (MARA) handles questions and complaints about migration agents. If you believe that the advice you are receiving is misleading or have other concerns contact the MARA:

Ph. 1300 22 62 72 or + 61 2 9078 3552; or at www.mara.com.au



457 Important contacts:

visa

If you have any complaints or concerns about how you are being treated by your employer while working in Australia, contact the following organisations:

- The Australian Manufacturing Workers' Union **1300 732 698** www.amwu.org.au

You can also contact the relevant authority below:

- Department of Immigration and Citizenship **131 881** www.immi.gov.au
- The Fair Work Ombudsman **13 13 94** www.fwo.gov.au
- Australian Human Rights Commission **1300 656 419** www.hreoc.gov.au

If you feel your workplace is unsafe you should contact the AMWU immediately.

You can also contact the relevant state authority below:

WorkCover NSW **13 10 50** www.workcover.nsw.gov.au

WorkSafe VIC **1800 136 089** www.workcover.vic.gov.au

WorkCover QLD **1300 362 128** www.workcoverqld.com.au

WorkCover WA **1300 794 744** www.workcoverwa.gov.au

WorkCover ACT **02 6207 3000** www.workcover.act.gov.au

SafeWork SA **13 18 55** www.workcover.com

NT WorkSafe **1800 019 115** www.worksafe.nt.gov.au

Workplace Standards TAS **1300 366 322** www.wst.tas.gov.au

- If you have a complaint or compliments about DIAC services, contact the Global Feedback Unit on **133 177** or go to www.immi.gov.au/contacts/forms/services/index.htm
- If you need help in another language, contact Translating and Interpreting Services (TIS) on **131 450** or go to www.immi.gov.au/tis
- To find out if your employer is paying you the correct amount of superannuation, call the Australian Taxation Office on **13 10 20** www.ato.gov.au/super
- For information about your Tax File Number and overseas assets, investments and pensions call the Australian Taxation Office on **13 28 61** or visit www.ato.gov.au/individuals/pathway.asp?pc=001/002/012

